

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.5643 of 2017 (O&M)

Date of decision:14.02.2019

Sarabdeep Singh

Vs.

... Appellant(s)

Surinder Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Aggarwal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.14916-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 67 days in filing the appeal is condoned.

C.M. stands allowed.

RSA No.5643 of 2017 (O&M)

The appellant-plaintiff has not been successful in claiming the specific performance of the agreement to sell dated 21.12.2010 allegedly executed by the defendants in favour of the plaintiff for the sale of land at the rate of Rs.8.00 lakhs per acre on receipt of Rs.4.00 lakhs as earnest money. The stipulated date for execution and registration of the sale deed was 30.4.2011.

The plaintiff alleged that he served a legal notice calling upon the defendants to execute the sale deed after receiving the balance sale

consideration. On 09.12.2013, the plaintiff remained present before the office of Executive Magistrate, Baba Bakala alongwith remaining sale consideration but the defendants did not turn up.

The defendants opposed the suit and stated that 30.04.2011 was the last date for execution and registration of the sale deed. Since 30.04.2011 and 01.05.2011 were the holidays, the defendants on 02.05.2011 appeared before the office of Executive Magistrate, Baba Bakala but the plaintiff did not come present, therefore, readiness and willingness was conspicuously wanting. Agreement to sell was also discernible.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that agreement to sell since had been admitted, the only point to be seen in this case the Court did not want to exercise the discretion under Section 20 of Specific Relief Act in view of the attenuating circumstances, the amount of Rs.4.00 lakhs as per the provisions of Section 74 of Contract Act, should not have been forfeited.

I am afraid the aforementioned argument is not sustainable as the plaintiff did not show readiness and willingness and stated to have sent the legal notices in 2011 and 2013. Both were duly replied vide Ex.D4 wherein the defendants unequivocally not only rescinded/cancelled agreement but also forfeited the amount. However, no challenge has been laid to the same. The suit for specific performance of the agreement to sell in the absence of any challenge to the cancellation of the agreement in view of the law laid down by the Hon'ble Supreme Court in **I.S.Sikandar by LR**s

vs. K. Subramani and others 2014(1) RCR (Civil) 236, was not maintainable.

As an upshot of my findings, arguments of Mr. Ashish Aggarwal, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 14, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No